IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.1289 OF 2004

Laxman Thakre. ...Appellant.
Vs.
Mathuradas Thakre & Ors. ...Respondents.
....
Mr. S.S. Patwardhan for the Appellant.
Ms. Gauri Godse for Respondent Nos.1 and 2.
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CORAM :DR.D.Y.CHANDRACHUD, J.
July 10, 2007.

P.C.:

The suit for declaration and for possession was decreed by the Trial Court and the decree has been confirmed in appeal. The present Second Appeal has been instituted by Defendant No.12.

In para 3A of the Plaint as amended, the case of the Plaintiff was that Defendant Nos.7 to 12 had carried out an unauthorised construction in 1992 during the pendency of the suit. Similarly in para 5A it was asserted that Defendant Nos.7 to 12 were the tenants of Defendant Nos.1 to 6.

In the Written Statement filed by Defendant Nos.11 and 12 jointly, the description of the suit property was admitted to be correct, but the plea was that the Defendants did not admit that the suit property belongs to the Plaintiffs as the joint family property. In para 11 of the Written Statement, the Defendants set up a case that their house did not fall within the boundaries of the suit property and that the father of the Defendants had constructed his own house on CTS 1148 and that the Defendants were enjoying the property continuously, peacefully and without any interruption for over 25 years upon which they had become owners by adverse possession.

Both the Learned Trial Judge and the Appellate Court have upon the basis of the evidence rejected the plea of adverse possession. The Appellate Court has noted that the predecessor of Defendant Nos.1 to 6, Sudam Patil was possessing the property with the permission of the First Plaintiff and at Exh. 118, was a certified copy of the statement given in enquiry proceedings before the City Survey Officer. In the circumstances, it could not be said that possession was hostile to the real owner. Sudam Patil being a

licensee himself, the other Defendants who claimed through him could not be regarded as having an interest adverse to that of the Plaintiffs.

However, on behalf of the Appellant, it has been urged that the Appellant had set up a title independent of Sudam Patil which was based on a plea of adverse possession. The Appellant did not step into the witness box and evidence on his behalf was that deposed to by his wife. A perusal of the evidence of the Appellant's wife, Lalita Laxman Thakre would reveal that she got married in 1989 to the Appellant and that she was totally unaware of the alleged transaction prior thereto. According to her, an oral permission for the construction of the house was taken from one Samat, but she admitted that she was not acquainted with the aforesaid person and no material had been produced to show any written permission. The witness was unaware of whether the properties had been assessed by the Municipal Corporation. In the circumstances, the evidence of the witness for the Appellant was clearly insufficient to establish the plea of adverse possession. The only other submission that has been

made is that the contention of the Appellant was that the house property belonging to the Appellant did not fall within the boundaries of th suit property. Such a submission cannot be accepted for more than one reason, the first being that the entire plea of the Appellant was that of adverse possession which would postulate the acceptance of the title of the original owner. That apart, the quality of the evidence does not show that the Appellant had, as has already been adverted to, any title. The submission urged by the Appellant does not raise any substantial question of law. The appeal shall, accordingly, stand dismissed.

In view of the dismissal of the Second Appeal, the Civil Application does not survive and is accordingly disposed of.

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